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in commerce, and demand his share of railroad-owned cars, to the prejudice of other shippers. This is another aspect of the very evil the car-distribution cases sought to correct. The argument taken that the demurrage charge would not prevent this discrimination because the shipper could unload the cars, notify the carrier, and then re-load, and use them for storage purposes as long as he cared to, and call for his share of the carriers' equipment, excluding his own from consideration, is not fatal.¹³ A regulation need not fail because it is not a perfect panacea for the evil it seeks to correct. It is sufficient that it in fact tends toward a substantial improvement — places some substantial obstacle against this evil. The very fact that the shipper must go through this "useless labor" is a practical answer to the objection. By imposing the charge the shipper, as a practical matter, is very likely to return the cars promptly to railroad service.

Further, there seems no sufficient answer to the proposition that the carrier, since he is under no common-law or statutory duty to receive private cars when tendered, may impose upon his acceptance the condition that the shipper pay this demurrage charge. This condition may properly be implied from the fact that the railroad in its tariff published with the Interstate Commerce Commission regarding the use of privately owned cars includes both the rental they will pay the owner, and the charge they will impose as demurrage. The shipper cannot accept a part and reject the remainder. Nor is this an unreasonable condition. It enables the railroad to count with a degree of certainty upon the continued use of privately owned cars, and to regulate its own equipment upon this basis, for the better service to the general shipping public.

To the objection that the charge is contrary to the Act to Regulate Commerce, it may be answered that "surely any arrangement for the use of private cars which causes, or results in, undue preference or unjust discrimination is repugnant to the underlying principle, as well as in conflict with the terms, of the act."¹⁴ It may be suggested, further, that Swift & Co., by placing their cars in railroad service, have entered, with the carrier, into the joint business of supplying interstate railway facilities, and, as such, have come definitely within the scope of the Act.

RECENT CASES

BILLS AND NOTES — DISCHARGE OF INDORSERS — EXTENSION AGREEMENT WITH THIRD PARTY. — The holder of a note indorsed for accommodation deposited the note after maturity as collateral for an unmatured obligation owed to a third person. Section 120 of the Negotiable Instruments Law provides for the discharge of an indorser "*by any agreement binding on the holder to extend the time of payment or to postpone the holder's right to enforce the instrument.*" The holder later sues an accommodation indorser. *Held*, that he may recover. *Brosemer v. Brosemer*, 162 N. Y. Supp. 1067 (Sup. Ct., Oswego Cty.).

¹³ This objection prevailed in *Proctor & Gamble Co. v. Cincinnati, etc. Ry. Co.*, 188 Fed. 221; but the court upheld the charge on the second ground indicated above.

¹⁴ Quoted from the opinion of the Commission in *Proctor & Gamble Co. v. Cincinnati, etc. Ry. Co.*, 19 Int. Com. Rep. 556, 558.

At common law a binding agreement between the holder and the maker of a note for an extension of time discharged the indorsers. *Siebeneck v. Anchor Savings Bank*, 111 Pa. St. 187, 2 Atl. 485. The basis of the rule was that the rights of the indorsers were prejudiced, in that they could not by payment of the note acquire the right to proceed immediately against the maker. For they were subrogated to the rights of, and so subject to the same defenses as, the holder. But this reason does not apply when the agreement is between the holder and a third party; hence the indorsers were not discharged. *Wright v. Independence Nat. Bank*, 96 Va. 728, 32 S. E. 459. See 2 DANIELS, NEGOTIABLE INSTRUMENTS, 5 ed., § 1324. Probably, the provision of the Negotiable Instruments Law was intended to enact the common-law rule; for there seems to be no more reason for the discharge of the indorsers where the agreement is with a third party than where there is merely delay by the holder in bringing an action against the maker. Where there is reasonable basis for doubt, a statute, whose language purports to change the common law, should be strictly construed; and especially is this true where the statute is part of a uniform law, in general declaratory of the common law. 2 LEWIS' SUTHERLAND STATUTORY CONSTRUCTION, 2 ed., 860 *et seq.* But here the words of the statute seem too plain to be construed as enacting the common-law rule. The principal case seems to limit the express words of the statute.

CARRIERS — BILLS OF LADING — LIABILITY OF CONSIGNOR FOR FREIGHT. — A railroad carried fruit consigned to a purchaser who contracted with the vendor to pay freight. Title passed to the purchaser on shipment. The railroad issued its bill of lading in the usual form providing for delivery to consignee, he paying freight. The carrier delivered the goods, through error collecting from the consignee only part of the freight due. It sought further payment from the consignee; but it never sued him, although he was solvent. The railroad now sues the shipper for the balance due. *Held*, that it may not recover. *Yazov & M. V. R. Co. v. Zemurray*, 238 Fed. 789 (C. C. A., 5th Circ.).

In general, the consignor, under a contract of shipment, is liable for the freight, irrespective of an attempt by the carrier to collect from the consignee. *Shepard v. De Barnales*, 13 East 565; *Wooster v. Tarr*, 90 Mass. 270; *Grant v. Wood*, 21 N. J. L. 292; *Gilson v. Madden*, 1 Lans. (N. Y.) 172; *Collins v. Union Transportation Co.*, 10 Watts (Pa.) 384; *Spencer v. White*, 23 N. C. 236; ABBOTT, SHIPPING, 683. Most of these cases proceed on the ground that the consignor is the true owner and so ultimately liable. See *Grant v. Wood*, *supra*; *Spencer v. White*, *supra*; *Barker v. Havens*, 17 Johns. (N. Y.) 234, 237. But *cf.* *Wooster v. Tarr*, *supra*. Normally the owner is ultimately liable. But he is not necessarily so. Ultimate liability must depend on the agreement between the consignor and consignee. Whether the carrier may hold the consignor for freight should depend upon the agreement between the consignor and the carrier. This often involves the question whether the usual clause in the bill of lading, "consignee paying freight," is intended to benefit the consignor or not. See *Spencer v. White*, *supra*, 238. The intent must be gathered from all the circumstances; and where the consignee is known to be ultimately liable, the construction should be like that in the principal case, that the utmost effort be made to collect from the consignee before the consignor can be held. See *Barker v. Havens*, *supra*. This result is commendable in that it casts the burden on the right party in the first instance without circuity of action, and secures protection to consignor and carrier alike. *Cf.* *Thomas v. Snyder*, 39 Pa. St. 317.

CHOSER IN ACTION — GIFT — PAROL EXTINGUISHMENT OF A DEBT. — The deceased had advanced money to the defendant who executed and delivered to him a promissory note. Before his death deceased refused to accept payment and told defendant to keep the money for himself. The executrix now